

EXHIBIT A

Response to Resistance

200.1 PURPOSE AND SCOPE

This policy recognizes that the use of force in response to resistance by law enforcement requires constant evaluation and that response to resistance is a serious responsibility. The purpose of this policy is to provide officers with guidelines on objectively reasonable response to resistance. While there is no way to specify the exact amount or type of objectively reasonable force to be applied in any situation, each officer is expected to use these guidelines to make such decisions in a professional, impartial, and objectively reasonable manner.

This policy is written in terms to apply to sworn officers. In incidents where civilian employees are authorized to use force, they are subject to the same policies and procedures as officers but the test of objective reasonableness is judged from the perspective of an objectively reasonable civilian employee.

200.1.1 PHILOSOPHY

The use of force by law enforcement personnel is a matter of critical concern both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied human encounters and when warranted, may exercise control over another in carrying out their duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. It is also understood that vesting officers with the authority to use lawful and objectively reasonable force and to protect the public welfare requires a careful balancing of all human interests.

200.1.2 DEFINITIONS

Bodily Injury - Physical pain, illness or any impairment of physical condition (Tex. Penal Code § 1.07(8)).

Deadly Force - Force that is intended or known by the officer to cause, or in the manner of its use or intended use is known to be capable of causing death or serious bodily injury (Tex. Penal Code § 9.01(3)).

Force - Any physical contact with a subject by an officer using the body or any object, device, or weapon, not including unresisted escorting or handcuffing a subject.

Non-Deadly Force - Any application of force other than deadly force.

Objectively Reasonable - An objective standard viewed from the perspective of a reasonable officer on the scene, without the benefit of 20/20 hindsight, and within the limitations of the totality of the circumstances presented at the time of the incident.

Serious Bodily Injury - Bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ (Tex. Penal Code § 1.07(46)).

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200.1.3 DUTY TO INTERCEDE

Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of such excessive force. Such officers should also promptly report these observations to a supervisor.

200.1.4 RESPONSE TO RESISTANCE RELATED POLICIES

- (a) Policy 200 (Response to Resistance).
- (b) Policy 202 (Firearm Discharge Situations).
- (c) Policy 204 (Leg Restraint Guidelines).
- (d) Policy 206 (Control Devices and Techniques).
- (e) Policy 208 (TASER® Guidelines).
- (f) Policy 211 (Response to Resistance Inquiry, Reporting and Review).
- (g) Policy 212 (Force Review Board).

200.2 RESPONSE TO RESISTANCE POLICY

While the type and extent of force may vary, it is the policy of this department that officers use only that amount of objectively reasonable force which appears necessary under the circumstances to successfully accomplish the legitimate law enforcement purpose in accordance with this policy.

- (a) Given that no policy can realistically predict every situation an officer might encounter, it is recognized that each officer must be entrusted with well-reasoned discretion in determining the appropriate response to resistance in each incident.
- (b) Circumstances may arise in which officers reasonably believe that it would be impracticable or ineffective to use any of the standard tools, weapons, or methods provided by the Department. Officers may find it more effective or practicable to improvise their response to rapidly unfolding conditions they are confronting. In such circumstances, the use of any improvised device or method must still be objectively reasonable and used only to the extent which reasonably appears necessary to accomplish a legitimate law enforcement purpose.
- (c) While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this policy requires an officer to actually sustain physical injury before applying objectively reasonable force.
- (d) Any complaint by a subject that an officer caused pain or injury shall be treated as a response to resistance force incident, except complaints of minor discomfort from unresisted handcuffing.

200.2.1 DETERMINING THE OBJECTIVE REASONABLENESS OF FORCE

Any interpretation of objective reasonableness about the amount of force that reasonably appears to be necessary in a particular situation must allow for the fact that police officers are often forced to

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make split-second decisions in circumstances that are tense, uncertain and rapidly evolving, and the amount of time available to evaluate and respond to changing circumstances may influence their decisions. The question is whether the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting him.

- (a) When determining whether to apply any level of force and evaluating whether an officer has used objectively reasonable force, a number of factors should be taken into consideration. These factors include, but are not limited to:
1. The conduct of the individual being confronted as reasonably perceived by the officer at the time.
 2. Officer/subject factors such as age, size, relative strength, skill level, injury/level of exhaustion and number of officers vs. subjects.
 3. Influence of drugs/alcohol or mental capacity.
 4. Proximity of weapons.
 5. The degree to which the subject has been effectively restrained and his ability to resist despite being restrained.
 6. Time and circumstances permitting, and the availability of other options (what resources are reasonably available to the officer under the circumstances).
 7. Seriousness of the suspected offense or reason for contact with the individual.
 8. Training and experience of the officer.
 9. Potential for injury to citizens, officers and subjects.
 10. Risk of escape.
 11. Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
 12. Other exigent circumstances.

200.2.2 USE OF FORCE TO AFFECT A DETENTION, AN ARREST OR TO CONDUCT A SEARCH

An officer is justified in using reasonable force when the officer reasonably believes the use of such force is immediately necessary (Tex. Penal Code § 9.51(a)):

- (a) To make or assist in a detention or an arrest, or to conduct a search that the officer reasonably believes is lawful.
- (b) To prevent or assist in preventing escape after an arrest, provided the officer reasonably believes the arrest or search is lawful.
- (c) To make an arrest or conduct a search under a warrant that the officer reasonably believes is valid.

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200.2.3 NOTICE OF AUTHORITY AND IDENTITY

If it is not already reasonably known by the subject to be searched or arrested, or it is not reasonably impracticable to do so, officers should make clear their intent to arrest or search and identify themselves as a peace officer before using force (Tex. Penal Code § 9.51(a)(2)).

200.3 DEADLY FORCE APPLICATIONS

An officer has no duty to retreat and is only justified in using deadly force against another when and to the extent the officer reasonably believes the deadly force is immediately necessary to (Tex. Penal Code § 9.51(c) and (e)):

- (a) Protect himself or others from what he reasonably believes would be an imminent threat of death or serious bodily injury.
- (b) Make an arrest or to prevent escape after arrest when the officer has probable cause to believe that:
 - 1. The subject has committed or intends to commit an offense involving the infliction or threatened infliction of serious bodily injury or death; or
 - 2. The officer reasonably believes that there is an imminent or potential risk of serious bodily injury or death to any other person if the subject is not immediately apprehended.

200.4 REPORTING THE RESPONSE TO RESISTANCE

Any response to resistance by a member of this department shall be documented promptly, completely and accurately in an appropriate report as prescribed by Policy 211 (Response to Resistance Inquiry, Reporting, and Review).

200.4.1 NOTIFICATION TO SUPERVISORS

Supervisor notification shall be made as soon as practicable following any force incident or allegation of use of force.

200.4.2 MEDICAL ATTENTION

Prior to booking or release, medical assistance shall be obtained for any subject who has sustained visible injury, expressed a complaint of injury or continuing pain or who has been rendered unconscious. Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the jail.

A subject who exhibits extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and impervious to pain (sometimes called "excited delirium"), or who requires a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death and should be examined by qualified medical personnel as soon as practicable. Any individual exhibiting signs of distress after such an encounter shall be medically cleared prior to booking.

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If any individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If an audio recording is made of the contact or an interview with the individual, any refusal should be included, if possible.

200.4.3 ASSISTING MEDICAL PROFESSIONALS

- (a) An officer who restrains a patient to assist medical personnel, with an amount of force which does not rise above the level of holding the patient down (e.g. arms, legs, foot, torso) is not required to report a Response to Resistance or notify their supervisor as outlined in APD Policies 211 and 200.4.1.
 - 1. Medical personnel are:
 - (a) Medical staff at a medical facility (e.g. Brackenridge, Austin State Hospital, Seton)
 - (b) Licensed emergency medical technicians (EMT), phlebotomist, or other medical professional in performance of their official medical duties
- (b) If an officer uses a level of force greater than merely holding a limb or applying bodily weight on the patient, the officer will adhere to APD Policies 211 and 200.4.1 Response to Resistance by:
 - (a) Notifying their supervisor, and
 - (b) Completing an incident report including the title code 8400